

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE MERCK & CO., INC., SECURITIES,
DERIVATIVE & "ERISA" LITIGATION

MDL No. 1658 (SRC)

THIS DOCUMENT RELATES TO: THE
CONSOLIDATED SECURITIES ACTION

Case No. 2:05-CV-01151-SRC-MF
Case No. 2:05-CV-02367-SRC-MF

Judge Stanley R. Chesler
Magistrate Judge Mark Falk

**STIPULATION AND [PROPOSED] ORDER RESOLVING THE MOTION OF THE
PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI TO INTERVENE
AND MODIFYING THE LEAD PLAINTIFF AND LEAD COUNSEL STRUCTURE**

WHEREAS, by Order signed February 23, 2004 (the "February 23, 2004 Order"), Richard Reynolds, Steven LeVan, Jerome Haber and Marc Nathanson (the "Lead Plaintiffs") were appointed, pursuant to Section 21(D)(a)(3)(B) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78u-4(a)(3)(B), as lead plaintiffs by the United States District Court for the Eastern District of Louisiana (the "Louisiana District Court"), in the action entitled *Pringle v. Merck & Co., Inc.*, Civil Action No. 2:03-CV-3215 KDE-JCW (E.D. La.) (the "*Pringle* Action"), into which all related securities actions filed in the Louisiana District Court were consolidated; and

WHEREAS, by the February 23, 2004 Order, the Louisiana District Court approved Lead Plaintiffs' selection of Milberg Weiss Bershad Hynes & Lerach LLP (n/k/a Milberg Weiss & Bershad LLP) ("Milberg Weiss") and Stull, Stull & Brody as Plaintiffs' Co-Lead Counsel, pursuant to Section 21(D)(a)(3)(B)(v) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B)(v); and

WHEREAS, pursuant to 28 U.S.C. § 1407, by Order of the Judicial Panel on Multidistrict Litigation, dated February 23, 2005, in *In re Merck & Co., Inc. Securities, Derivative & "ERISA" Litigation*, MDL No. 1658, the *Pringle* Action, into which all related securities actions pending in the Eastern District of Louisiana were consolidated, was transferred to the District of New Jersey and assigned to this Court for coordinated and consolidated pretrial proceedings with all related securities actions pending in this District; and

WHEREAS, by Order signed April 6, 2005 (the "April 6, 2005 Order"), this Court confirmed the appointment of Richard Reynolds, Steven LeVan, Jerome Haber and Marc Nathanson as Lead Plaintiffs in the above-entitled securities action, pursuant to Section 21(D)(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B); and

WHEREAS, by the April 6, 2005 Order, this Court confirmed the appointment of Milberg Weiss and Stull, Stull & Brody as securities plaintiffs' co-lead counsel pursuant to Section 21(D)(a)(3)(B)(v) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B)(v); and

WHEREAS, on October 26, 2006, The Public Employees' Retirement System of Mississippi ("MPERS") filed a motion to intervene and to require the lead plaintiffs to appear at a hearing concerning their adequacy under the PSLRA and Fed. R. Civ. P. 23 ("MPERS's Motion"); and

WHEREAS, on November 14, 2006, the Lead Plaintiffs opposed MPERS' Motion and filed a cross-motion for an order approving lead plaintiffs' Selection of Brower Piven, A Professional Corporation ("Brower Piven"), as co-lead counsel (the "Cross-Motion"); and

WHEREAS, on November 20, 2006, MPERS filed a reply memorandum in further support of its motion and opposed the Lead Plaintiffs' Cross-Motion; and

WHEREAS, on November 27, 2006, this Court held a hearing at which time the Lead Plaintiffs and MPERS presented arguments to the Court concerning MPERS' Motion and the Lead Plaintiffs' Cross-Motion; and

WHEREAS, during the November 27, 2006 hearing, and by Order signed December 13, 2006, this Court (i) granted MPERS' Motion to intervene for the limited purpose to pursue the issue of whether or not the Lead Plaintiffs are appropriate lead plaintiffs for the Class in this matter; (ii) ordered the Lead Plaintiffs to attend a hearing on January 8, 2007, at which time the representatives of the plaintiff class would be available, to the extent that the attorney-client privilege permits, to testify, as to the events which transpired with regard to Milberg Weiss since May 2006; and (iii) denied without prejudice Lead Plaintiffs' Cross-Motion to approve the selection of Brower Piven as co-lead counsel; and

WHEREAS, during the November 27, 2006 hearing, this Court stated that, "the Court, from everything it saw in the papers and submissions, was satisfied that the lead counsel in this case were indeed pursuing the case vigorously and intelligently" (November 27, 2006 Hearing Tr. at 44:12-14); that the Court was "very loathe to create a scenario in which the extensive work and effort done by the attorneys in this case may be wasted" (*id.* at 46:8-10); and that "some type of revised structure [may be required] to permit this case to go forward while still ensuring that there is continuity and that the very substantial and talented efforts of counsel to date are not wasted" (*id.* at 46:21-25); and

WHEREAS, the continued involvement in this action by Lead Plaintiffs Jerome Haber, Steven LeVan and Richard Reynolds, and the law firms of Milberg Weiss; Stull, Stull & Brody; and Brower Piven will provide continuity and ensure that the efforts of these Lead Plaintiffs and counsel to date are not wasted; and

WHEREAS, Lead Plaintiff Marc Nathanson, through his counsel, Stull, Stull & Brody, seeks to withdraw voluntarily as a Lead Plaintiff in this action; and

WHEREAS, the remaining Lead Plaintiffs – Richard Reynolds, Steven LeVan and Jerome Haber – have determined that it is in the best interests of the Class to add MPERS as a co-lead plaintiff, and Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”), and Brower Piven, as co-lead counsel in this action; and

WHEREAS, the Court having considered these issues and believing that it is in the best interests of the Class to revise the lead plaintiff structure in this action as set forth herein; and

WHEREAS, this Court has previously found that it has continuing jurisdiction to revisit the issue of appointment of lead plaintiff and has that jurisdiction at any time during the pendency of the lawsuit; and

IT IS HEREBY ORDERED that:

1. Marc Nathanson is hereby withdrawn as a Co-Lead Plaintiff in this action.
2. MPERS is hereby appointed as co-lead plaintiff in this action. Accordingly, the co-lead plaintiffs are: Jerome Haber, Steven LeVan, MPERS and Richard Reynolds (“Co-Lead Plaintiffs”).
3. BLB&G and Brower Piven are hereby appointed as co-lead counsel in this action. Accordingly, the co-lead counsel for the Class are: Milberg Weiss; Stull, Stull & Brody; BLB&G and Brower Piven (“Co-Lead Counsel”).
4. Co-Lead Counsel shall have the authority and responsibilities established for Co-Lead Counsel for Securities Plaintiffs in this Consolidated Securities Action by Pretrial Order No. 1, signed by the Court on May 5, 2005.

5. MPERS' Motion is hereby resolved.

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- and -

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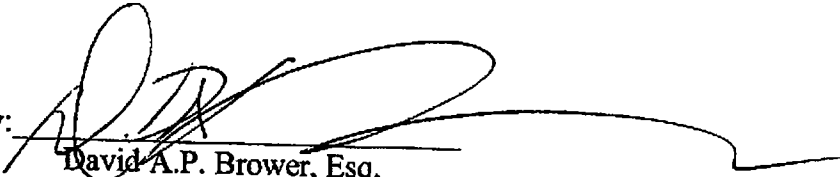
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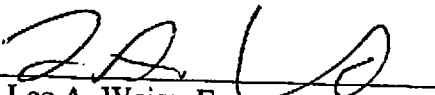
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**BROWER PIVEN
A PROFESSIONAL CORPORATION**

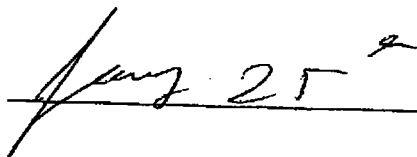
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Proposed Co-Lead Counsel to the Class

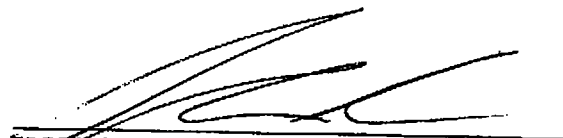
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*Counsel for Co-Lead Plaintiff Richard
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DATED:  25th, 2007

SO ORDERED


HON. STANLEY R. CHESLER
UNITED STATES DISTRICT JUDGE